



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 12, 1996

Mr. Marvin B. Sallop
Executive Director
Texas School for the Deaf
P.O. Box 3538
Austin, Texas 78764

Letter Opinion No. 96-041

Re: Salary of the executive director of the
Texas School for the Deaf (ID# 36600)

Dear Mr. Sallop:

You have requested our opinion regarding the salary of the executive director, or superintendent, of the Texas School for the Deaf.

Senate Bill 1, Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, 1995 Tex. Sess. Law Serv. 2207, 2207-2505, re-enacts titles 1 and 2 of the Education Code. Section 30.053 thereof provides, among other things:

(a) The superintendent of the Texas School for the Deaf is appointed by the governing board of the school.

...

(d) The board shall annually establish the superintendent's salary. The salary must be based on not more than 230 days of service and may not exceed 120 percent of the salary of the highest paid instructional administrator at the school.

Id. at 2331-32. On the other hand, the 1995 general appropriations act, in its appropriation to the Texas School for the Deaf, fixes the maximum salary of the executive director at \$63,230 per annum for both fiscal years 1996 and 1997. General Appropriations Act, 74th Leg., R.S., ch. 1063, art. III, § 1, 1995 Tex. Sess. Law Serv. 5242, 5475. You state that the salary for the highest paid instructional administrator at the school is \$63,926 for the 1995-96 school year.

Article VIII, section 6, Texas Constitution, provides that "[n]o money shall be withdrawn from the Treasury but in pursuance of specific appropriations made by law." Funds in the treasury may thus be appropriated only by legislative action. Attorney General Opinion JM-115 (1983).

In Attorney General Opinion JM-115, this office considered a situation in which, although an Insurance Code provision required state colleges and universities to furnish

basic life, accident, and health insurance coverage to their employees "at least equal to those commonly provided in private industry and those provided employees of other agencies of the state of Texas," Attorney General Opinion JM-115 (1983) at 2, the legislature had provided an appropriation for fiscal year 1983 of only seventy dollars per employee. The opinion noted that the Insurance Code provision, article 3.50-3,

is a general law, and does not itself appropriate funds to carry out its purposes. The legislature in enacting article 3.50-3 could not thereby bind subsequent legislatures to make appropriations to carry out its purposes. Article 3.50-3 does not establish a constitutionally protected vested right in university employees to full payment of basic coverage from appropriated funds.

Id. (citations and emphasis omitted).

In Attorney General Opinion H-648, this office considered a statute similar to the one at issue in the matter before us: it authorized the Board of Dental Examiners to fix the salary of the executive secretary. Attorney General Opinion H-648 (1975) at 1-2. The line-item appropriation for the position, however, was set by the general appropriations act at \$12,000 per year. *Id.* at 2. The board attempted to avoid the latter restriction by paying its executive secretary a salary supplement from the Dental Registration Fund. *Id.* at 1. Attorney General Opinion H-648 held that the board was not authorized to pay the supplement because the statute permitted expenditures from the Dental Registration Fund "in the amounts fixed by the Legislature in the general appropriation bills," and no appropriation therefrom had been made for the salary supplementation. *Id.* at 4.

These opinions establish the principle that, by its line-item appropriation for the executive director's salary, the legislature has limited the amount of appropriated funds which may be expended on the salary of the executive director for fiscal years 1996 and 1997. A position listed in a "Schedule of Exempt Positions" shall receive compensation at a rate not to exceed the amount indicated in that schedule."

Furthermore, article IX of the general appropriations act for the present biennium provides, "A position listed in a 'Schedule of Exempt Positions' shall receive compensation at a rate not to exceed the amount indicated in that schedule." General Appropriations Act, 74th Leg., R.S., ch. 1063, art. IX, § 1, 1995 Tex. Sess. Law Serv. at 5245, 6058. Article IX also provides:

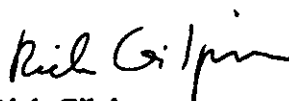
No employee holding a position classified in this Act under the authority of the Position Classification Act or an exempt position for which the salary is specifically set in or pursuant to this Act may receive a salary supplement from any source unless a specific grant of authority is provided in this Act or as provided by general law.

Id. at 6057. When these two provisions from article IX are examined in conjunction with the line-item appropriation, and when those provisions of the appropriations act are considered together with section 30.053 of the Education Code, we do not believe that any conflict necessarily arises. We conclude therefore that the salary of the executive director of the School for the Deaf may be set for fiscal years 1996 and 1997 in any amount not to exceed \$63,230 in appropriated funds, provided, in addition, that such amount does not exceed the maximum permitted by subsection (d) of section 30.053.¹

S U M M A R Y

The salary of the executive director of the Texas School for the Deaf may be set for fiscal years 1996 and 1997 in any amount not to exceed \$63,230 in appropriated funds, provided, in addition, that such amount does not exceed the maximum permitted by subsection (d) of section 30.053, Education Code.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

¹You do not ask about the possibility of paying a salary supplement to the executive director from nonappropriated funds, and indeed, we have no information as to whether the school even has access to nonappropriated funds. Pursuant to section 30.056, Education Code, "[t]he funding of the Texas School for the Deaf consists of:

- (1) money the legislature specifically appropriates for the school;
- (2) money the agency allocates to the school under this code;
- (3) money paid under a contract or other agreement;
- (4) money the school receives through a gift or bequest;
- (5) a payment the school receives from a school district under Section 30.003; and
- (6) the school's share of the available school fund and payments to compensate for payments no longer made from the available school fund as provided by Section 30.003(f).